

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 24-cr-50-JDP

STEVEN ANDEREGG,

Defendant.

THIRD PRETRIAL MOTION: MOTION TO DISMISS COUNTS 2 AND 3

Steven Anderegg, by counsel, moves to dismiss counts 2 and 3 of the Indictment. As argued in the omnibus brief in support of the pretrial motions, counts 2 and 3 of the Indictment violate Anderegg's First and Fifth Amendment rights. In particular, the images at issue in counts 2 and 3 do not constitute obscene images. The images are of nude or semi-nude children, but the images themselves are not obscene materials.

To that point and as argued more fully in the omnibus brief, the Supreme Court in *Ashcroft v. Free Speech Coalition* observed that: "As a general rule, pornography can be banned only if obscene, but under *Ferber*, pornography showing minors can be proscribed whether or not the images are obscene under the definition set forth in *Miller v. California*. *Ferber* recognized that 'the *Miller* standard, like all general definitions of what may be banned as obscene, does not reflect the State's particular and more compelling interest in

prosecuting those who promote the sexual exploitation of children.”¹ That is, there is a distinction between child pornography and obscene materials that has to be maintained. After all, “[p]ictures of young children engaged in certain acts might be obscene where similar depictions of adults, or perhaps even older adolescents, would not.”²

For the reasons expressed in the omnibus brief, while the images depicted may (if real children were depicted) qualify as child pornography, they do not constitute obscenity. Thus, counts 2 and 3 of the Indictment must be dismissed.

Dated this 23rd day of September, 2024.

Respectfully submitted,

STEVEN ANDEREGG, *Defendant*

Electronically signed by Joseph A. Bugni

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¹ 535 U.S. 234, 240

² *Id.*